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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 57.

UNITED STATES OF AMERICA,
Petitioner,

v.

ATLANTIC COAST LINE RAILROAD COMPANY,
Respondent.

BRIEF OF RESPONDENT.

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October 17, 1946.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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ATLANTIC COAST LINE RAILROAD COMPANY,
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BRIEF OF RESPONDENT.

I.

STATEMENT OF CASE AND FACTS.

This action was brought by the Railroad Company against the Government to recover the sum of $4,192.33, being the unpaid balance of the sum of $12,630.40 due by the Government to the appellee for shipments of phosphate rock from Pembroke, Florida, consigned to the British Ministry of War Transport, Norfolk, Virginia, July 24, 1942, and various shipments of steel from Greenville Piers, New Jersey, by J. D. Barry, Jr., as to one car and S. S. Bennett as to all other cars, consigned to the same consignee at Charleston, South Carolina, June 1, 1942. The Railroad Company rendered the bills against the Government for $12,630.40 and the Government deducted from the

bills $4,192.33. The appellee accepted the sum of $8,438.07 under protest and brought suit. The Government filed a counterclaim, alleging, as shown in the stipulation of facts, that the Railroad Company hauled large quantities of phosphate rock from phosphate mines in Florida consigned to the British Ministry War Transport, Tampa, Florida, upon charges computed at commercial rates which the Government paid. The Government alleged in its counterclaim that the phosphate rock was military and naval property of the United States moving for military and naval and not for civil use, and that it was entitled to land-grant deduction. In the Stipulation of Facts it was shown that at the time of the movement of these products there was a serious food shortage in Great Britain, who found it necessary to revise its agricultural practices to increase the production of food; that it was necessary to put into production a large area of land normally not used for the production of food, and phosphate fertilizers had to be imported and distributed to effectuate this revised agricultural program, and shipments of phosphate rock and superphosphates, including the shipments involved in this case, comprised a part of that program; that the United States, in 1941, was the only source from which Great Britain could acquire such materials. It appears from answers to interrogatories propounded by the Railroad Company that the freight rates were included in the cost of fertilizer shipments to Great Britain.

PROCEEDINGS BELOW.

The District Court found that there was no dispute about the facts and that phosphate rock or pebble phosphate rock, which was being transported upon Government bills of lading, was not military or naval property of the United States at the time it was being transported and was not moving for military and naval use, but was moving for civil use within the meaning of Section 321(a) of the Transportation Act of 1940, and that the freight rates applicable to such shipments were the full "commercial rates".

In his opinion the District Judge referred to an opinion by Judge Hutcheson of the District Court of Virginia dated March 24, 1945, 60 Fed. Supp. 433, which in effect he adopted. He reached the same conclusion as did Judge Hutcheson. The opinion of the Circuit Court of Appeals in this case is found in 152 Fed. (2d) 230, and the opinion in *United States* v. *Powell* in 152 Fed. (2d) 228.

II.

ISSUE INVOLVED.

The issue involved is whether under the facts the phosphate rock was "military or naval property of the United States, moving for military or naval and not civil use" as that term is employed in Section 321(a) of the Transportation Act of 1940. If it was, land-grant rates will apply as claimed by the Government. If it was not, the Government was properly billed at the applicable commercial rates.

III.

STATUTES INVOLVED.

The statutes involved are Sections 321(a), 321(b) and 322 of the Transportation Act of 1940, United States Code, Title 49, Section 65(a), and the act commonly known as the Lend-Lease Act, entitled "An Act Further to Promote the Defense of the United States", Public Law No. 2, 77th Congress, 1st Session, H. R. 1776, United States Code, Title 22, Sections 411, 423, effective March 11, 1941, printed in the appendix hereto.

IV.

HISTORY OF THE LAND-GRANT STATUTES.

To assist in the opening of the West in the latter half of the 19th century, Congress patented to various railroad companies portions of the public domain upon condition that the railroads construct lines of railroad and grant to

the Government reduced rates under varying degrees. Some of the Acts provided that the railroads should transport property and troops of the United States without charge and others at 50 per cent of the commercial rate. The provisions of law covering these land-grant deductions are now contained in Title 10, Paragraph 1375 of the United States Code, which provides that in charging for transportation by land-grant roads the Government shall pay at such rates as the Secretary of War shall deem just and reasonable, not to exceed 50 per centum of the full amount of compensation, . . . for the transportation of property or troops of the United States over any railroad which under land-grant acts, was aided in its construction by a grant of land on condition that said railroad shall be and remain a public highway for the use of the United States.

These provisions of law resulted in (1) discrimination against non-land-grant railroads, and (2) discrimination against shippers of the very sort the Interstate Commerce Act was intended to prevent, thus giving shippers located on land-grant routes who sell to the Government a distinct advantage over shippers on non-land-grant routes.

The wording of the statute itself gave rise to a great many suits involving the interpretation of the words "property or troops of the United States". One of the leading cases on this subject is *United States* v. *Galveston, Harrisburg & San Antonio R. R. Co.*, 279 U. S. 401. Army officers were required to furnish, at their own expense, their mounts, and the question arising under this case was whether the transportation of such mounts could be made at land-grant rates. The Court held that:

> "The United States demands service from its army officers which requires the use of things furnished by them. But it does not own and, as between it and them, it does not claim to own, hold or have any property rights in the uniforms, manuals, clothes, private mounts or other things by them furnished and used in the service. It would be unreasonable to hold valid the Government's claim of ownership asserted merely to

secure land grant rates for the transportation of such amounts. The construction contended for is without support and cannot be sustained."

Before reaching this conclusion, the Court stated (p. 404):

"The right of the United States to have the concessions and allowances in respect of transportation made by the carriers in consideration of the aid given is a continuing one. It is of great value to the Government and of course correspondingly burdensome to the carriers. *The terms of the obligation are to be sensibly and fairly read according to the words employed and not expanded or restricted by construction.* When considering another question arising under a like provision in a land grant Act, this Court said: 'It might be very convenient for the government to have more rights than it has stipulated for; but we are on a question of construction, and on this question the *usus loquendi* is a far more valuable aid than the inquiry what might be desirable'. *Lake Superior & Mississippi R. R. Co. v. United States*, 93 U. S. 442, 454."

Another fairly recent case is *Southern Pacific Co.* v. *United States*, 285 U. S. 240, which involved the question whether army officers of the Engineer Corps traveling in connection with the improvement of rivers and harbors or the work of the California Debris Commission were "troops of the United States" within the meaning of the land-grant Act. The court there held that the activities of the officers "in connection with rivers and harbors or the work of the California Debris Commission is non-military in character, and falls within the same category as that of many other employees and officials of the War Department, the nature of whose services excludes them from classification as part of the 'troops of the United States'."

The Court of Claims has rendered numerous decisions involving the question whether persons transported come within the term, some of which are *C. R. I. & P.* v. *United*

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* Note: Italics in this brief are supplied.

States, 58 Ct. Cl. 33; *Oregon-Washington Railroad & Nav. Co.* v. *United States*, 60 Ct. Cl. 458; *Illinois Central R.* v. *United States*, 62 Ct. Cl. 61; *Louisville & Nash. R. Co.* v. *United States*, 62 Ct. Cl. 154; *Minneapolis, St. P. & S. M. Ry.* v. *United States*, 64 Ct. Cl. 557, and *Southern Pacific Co.* v. *United States*, 89 Ct. Cl. 434.

In order to secure traffic which otherwise would move over land-grant routes at reduced rates, the non-land-grant carriers, including appellee, many years ago entered into so-called equalization agreements with the War Department under which they agreed to accept for transportation property and troops of the United States at land-grant rates if such transportation could be made in whole or in part over land-grant routes. Over the years, it is estimated that the land-grant railroads have paid to the Government by these reduced rates many time the value of the lands transferred to them and in addition the Government has realized large returns on increased values of public domains contiguous to the railroads constructed.

On March 17, 1938, the President appointed a Committee of Three, consisting of Interstate Commerce Commissioners Splawn, Eastman, and Mahaffie, to report upon the question of transportation, and especially the condition of the railroads, which was very acute. This Committee made its report to the President on March 24, 1938, (H. Doc. No. 583, 75th Congress, 3rd Session).

On September 30, 1938, he appointed a Committee of Six, composed of three representatives of railway management and three representatives of railway labor, for the same purpose. This Committee reported on December 23, 1938. It was commonly called the Committee of Six.

The Interstate Commerce Commission, on February 25, 1939, was asked by the Chairman of the House Committee on Interstate and Foreign Commerce to submit a report covering, among other things, its recommendation for transportation legislation made in the reports of these two Committees and on H. R. 2531, which contained a provision repealing land-grant deductions. In response to this re-

quest, on March 20, 1939, Hon. Jos. B. Eastman, Chairman of the Legislative Committee of the Interstate Commerce Commission, wrote a letter to the Chairman of the Committee on Interstate and Foreign Commerce of the House of Representatives upon House Bills 2531 and 4307, relating to Omnibus Transportation legislation, in which it was recommended that land-grant rates be abolished. (See House Committee Print, 76th Congress, 1st session.) On page 32 of the report, he says:

> "(7) We favor the proposals of the Committee of Three, the Committee of Six, and H. R. 2531 that the requirements in existing statutes for so-called 'land-grant deductions' in connection with the carriage by railroads of Government traffic be removed."

Prior to the introduction of H. R. 2531, S. 3876, 75th Congress, 3rd Session, and H. R. 10620, 75th Congress, had been introduced early in 1938. S. 3876 contained the following provisions:

> "* * * United States Government shall pay the applicable commercial rate for the transportation by railroad of any persons or property for the United States or on its behalf, except such applicable commercial rates shall not be paid for the transportation of men, officers, or personnel in any branch of the military or naval service and military or naval property."

H. R. 10620 provided for complete repeal of the land-grant rates without any exception being made for military and naval or other classes of property. Hearings on this latter bill were held by the Committee on Interstate and Foreign Commerce from May 31, 1938, to June 2, 1938. At these hearings Interstate Commerce Commissioner Joseph B. Eastman testified (pp. 6 and 7 of the Report of Hearings):

> "As I have indicated, also, these rate deductions are now a burden on many non-land-grant railroads. Furthermore, in recent years, the transportation of Government property has increased far beyond what

was originally contemplated. At the time of the original land grants there was some transportation of Government troops and of property in connection with these troops, but comparatively little else. At the present time there is a tremendous amount of Government transportation of property in connection with many of the emergency units as well as increased transportation by the Army and Navy."

At these hearings Lieutenant Colonel Carl Halla, Finance Department General Staff, United States Army, made a statement which he began by reading an official written report prepared by the War Department for presentation to the Committee. A portion of this written report follows (pp. 16-17 of Report of Hearings):

"When the land grant agreements were entered into, the majority of Government property shipped throughout the United States consisted of property, rations, uniforms, and equipment of the armed services. Today this situation has materially changed and agencies of our Government have entered into activities which require them to ship as Government property all classes of supplies, and materials, including hogs, cattle, wheat, butter, eggs, forest service supplies, construction materials used to further general employment. The increase in Government shipment in recent years have made the land grant deduction benefits assume enormous proportions.

"While it is agreed that the nation must support whatever transportation system is required and is desired to be continued, it is the view of the War Department that no injustice would arise if the railroads are required to continue under present agreements to transport troops and supplies for military and naval services at reduced rates. However, there appears to be no good reason why the railroads should be required to transport at reduced rates classes of property not foreseen or anticipated when the original agreement was entered into.

"For the reasons stated above the War Department can see no objection to the provisions of the proposed legislation if the Bill is amended to include the following additional provision:

"On line 7 after the word 'government' insert '*except such provisions as require reductions in the compensation received for the transportation of men, officers, or personnel in any branch of the military or naval service and military or naval property*'."

The 75th Congress ended without either S. 3876 or H. R. 10620 being enacted into law.

Early in the first session of the 76th Congress S. 2009 was introduced. At that time this Bill made no mention of land-grant rates or their repeal. Also, early in the first session of the 76th Congress H. R. 2531 was introduced, and it contained the following:

> "Sec. 501(a): Notwithstanding any other provision of law, on or after July 1, 1939, the United States Government shall pay the applicable commercial rate for the transportation by railroad of any person or property for the United States or on its behalf * * * ".

The ground covered in the hearings on H. R. 10620 was not covered in the hearings on H. R. 2531 but the Committee was referred to the prior hearings had in connection with H. R. 10620, 75th Congress. In the committee hearings on H. R. 2531 Mr. Carl R. Gray, President of the Union Pacific Railroad Company testified (p. 160):

> "It has been stated that there are some legal features that would have to be protected; that there is some litigation that the Government may have or has with individual lines. We hoped it would be possible to protect the Government's interest properly in the litigation, but when the land grants were made, the Government movement of troops and of military supplies and the mail was the only thing that was considered."

On May 25, 1939, S. 2009 was passed and sent to the House without any provision in respect of land-grant rates. On May 31, 1939, the Senate Bill was referred to the House Committee on Interstate and Foreign Commerce. The House Committee struck out the Senate Bill and substi-

tuted therefor its own bill, including Section 321(a), as follows:

> "Sec. 321(a): Notwithstanding any other provisions of law, but subject to the provisions of Section 22 of The Interstate Commerce Act, as amended, the full applicable commercial rates, fares, or charges shall be paid for transportation by any common carrier subject to such Act of any persons or property for the United States, or on its behalf, and full compensation determined by the Interstate Commerce Commission as reasonable therefor shall be paid for the transportation by railroad of the United States mail."

In reporting out this proposed change in the law, the House Committee said (House Report No. 1217, 76th Cong., 1st Session, July 18, 1939, p. 27):

> ". . . Subsection (a) of section 321 provides that notwithstanding any other provision of law, the Government shall pay the full applicable commercial rates, fares, or charges for transportation by any common carriers subject to the Interstate Commerce Act of persons or property for the United States or on its behalf; . . ."
>
> "The effect of subsection (a) is to relieve the carriers from the necessity of transporting persons or property of the United States at land-grant rates."

The Committee held no hearings on this bill but referred it to the House in this form. The House considered and debated the bill sitting as a Committee of the Whole. With reference to land-grant rates Representative Hinshaw said (84:9 Cong. Rec. 10114):

> "Since all of this has taken place, the Government has gone into the freight moving business more and more. The transport of troops and the transport of materials is a very small matter now, and has been a small matter over many years. Now, the Government of the United States is transporting in the hundreds and thousands of tons every conceivable type of commercial freight you can imagine—steel, cement, food

products, and everything else, for the building of roads, dams, post offices, schools and so forth—so the Government has put upon these roads a tremendous burden which was not contemplated when the lands were originally granted."

Representative Martin of Colorado said (84:9, Cong. Rec. 10117):

> "There ought to be an end sometime to the obligation, that it should not continue permanently, be clothed with immortality, and increasing with the growth of Government business from year to year. The entire picture has changed * * *. There is absolutely no comparison between conditions then and now, yet the obligations of the railroads will increase permanently."

On July 26, 1939, S. 2009, as amended by the House Committee, was passed by the House and on July 27, 1939, the bill was sent back to the Senate approved by the House as amended, extended and modified, and Senate concurrence was requested. Section 321 as contained in that Bill, is exactly as heretofore quoted.

The Senate disagreed with the House amendments and requested a joint conference. The Bill that came out of the Joint Conference contained the provision relating to military and naval property, and Section 321(a) was in the form in which it finally passed, namely:

> "Section 321(a): Notwithstanding any other provision of law, but subject to the provisions of sections 1(7) and 22 of the Interstate Commerce Act, as amended, the full applicable commercial rates, fares, or charges shall be paid for transportation by any common carrier subject to such Act of any persons or property for the United States, or on its behalf, except that the foregoing provision shall not apply to the transportation of military or naval property of the United States moving for military or naval and not for civil use or to the transportation of members of the military or naval forces of the United States (or of

the property of such members) when such members are traveling on official duty; * * * ".

The only explanation of the intent of the Committee of the meaning of the Section is found in Conference Report No. 2016, House of Representatives, 76th Congress, Third Session, in which the Managers on the part of the House made the following comments on page 87:

"Land Grant Rates

"Section 321 of part II of title III of the House amendment provided that the full applicable commercial rates, fares, or charges should be paid to any common carrier subject to the Interstate Commerce Act for transportation of persons or property for the United States, or on its behalf, but this provision was conditioned on the release by the carrier of claims against the United States to lands, interests in lands, compensation or reimbursement on account of lands, or interests in lands which has been granted, claimed to have been granted, or which it was claimed should have been granted to such carrier, under any grant from the United States.

"The conference substitute changes this provision by making an exception from this requirement of the payment of full commercial rates by the United States, in the case of the transportation of military or naval property moving for military or naval use, and in the case of the transportation of members of the military or naval forces of the United States (or of property of such members) when such members are travelling on official duty. In the case of transportation thus excepted, existing legal requirements and arrangements providing for reduced rates will continue to apply."

The Transportation Act of 1940 also added a paragraph to the Interstate Commerce Act expressing the *national transportation policy*. This paragraph is as follows:

"It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered

as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of *reasonable charges* for transportation services, *without unjust discriminations, undue preferences or advantages,* or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United Statees, of the Postal service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy."

V.

HISTORY OF THE LEND-LEASE ACT.

It must be kept in mind that the Transportation Act of 1940 became effective September 18, 1940, and the Lend-Lease Act, H. R. 1776, the title of which is "An Act further to Promote the Defense of the United States, and for Other Purposes", became effective March 11, 1941, six months thereafter. At the time of the effective date of the Lend-Lease Act the Neutrality Act was still in effect. Prior to the time of the enactment of the Lend-Lease Act Congress had passed, on November 4, 1939, an Act which would permit England and France to buy arms here for cash, and carry them away on their own ships. This was known as the "Cash-and-Carry Plan".

Shortly after the fall of Dunkerque the War Department entered into a contract with the United States Steel Export Corporation for various munitions, and the same day the British and the French Governments entered into a contract with us to take title to all this material "F. O. B. cars, as is, and where is", at exactly the same price that the

United States Steel Export Corporation had agreed to pay the War Department, and these goods moved abroad.

Later, the contracts which foreign countries made for purchases in this country were transferred to the British Government. See Stettinius, "Lend-Lease", pages 24-28, 30, 31 and 32.

In the report of the Senate Committee on Foreign Relations, accompanying H. R. 1776, headed "Promoting the Defense of the United States", the Committee under its "General Statement", says:

> "It is the conviction of your committee, confirmed by the testimony of those witnesses, that the *welfare of the United States* can best be served by a foreign policy based, as it has always been, upon two fundamental principles. Those principles are:
>
> 1. The United States must strive in all ways reasonably possible to *stay at peace with the world;* and
>
> 2. The United States must, in its own interests, supply effective material aid to those countries whose defense is vital to our defense.
>
> "Your committee believes that within the terms of H. R. 1776, as amended, provision is amply, safely, and constitutionally made that the foreign policy of the United States shall continue to be guided by these two principles. To the end that we may have peace the bill authorizes aid to be given promptly to those nations whose defense is vital to ours. To the end that we may have freedom, the bill casts the strength of *American industry* into the struggle against forces which may be directed against us. Your committee wishes strongly to emphasize its considered conviction *that H. R. 1776 is not a war measure but a practical safeguard aimed at keeping us out of war.*"

Under "Analysis of the Bill", the Report says:

> "The term 'defense article' is defined so as to include the usual implements of war, such as guns, airplanes, and the like, without which warring nations would be helpless. *The bill contains no authority, however, for sending American troops, under any circumstances, to fight on foreign soil or waters.*

"It should be noted that the term 'defense article' includes all such articles as the United States may hereafter acquire, in addition to those already possessed. This fact derives from the wording which provides that 'defense article' includes articles 'procured pursuant to section 3, or to which the United States or any foreign government has or hereafter acquires title, possession, or control'.

"No part of H. R. 1776, and, in particular, no meaning which may be attached to the word 'facility', as contained in section 2(a)(2), or the word 'procured' in the sentence following section 2(a)(4), authorizes the United States to commandeer or requisition any property in any manner not now provided by law.

"Two limitations upon the powers of the President contained in H. R. 1776 are the prohibitions provided in section 3(a)(2), against (a) any disposition of any defense article not manufactured or procured especially for the defense of a country whose defense is vital to ours 'except after consultation with the Chief of Staff of the Army, or the Chief of Naval Operations of the Navy, or both', and (b) any disposition of defense articles procured from funds heretofore appropriated of a value to exceed $1,300,000,000. These limitations are intended to insure that defense articles shall not be disposed of so as to endanger our Nation by unreasonably weakening our armed forces.

"The definition of the term 'defense article' as contained in section 2(a) of the bill is sufficiently broad to empower the President, when he deems it in the interest of our national defense, to authorize the Secretary of War or the Secretary of the Navy, or any governmental agency head, to test, prove, repair, or otherwise place in good working order any defense article, such as an airplane, ship, or gun belonging to any nation to whom aid may be given under the bill, and to use, for such purposes, a defense facility, such as a drydock, of the United States. Nothing contained in section 2(a), however, enlarges the existing power of the Government to requisition defense articles, such as foreign vessels in our ports. Nor is the repairing of a large flying boat, for a foreign nation, in one of our coastal factories any more of a war-like act than

the building of such a flying boat in the self-same factory."

* * * * * * * * * * *

"Most important of the nine sections contained in the bill is, of course, section 3. Under section 3(a), the President may authorize the Secretary of War or the Secretary of the Navy, or the head of any Government department or agency to manufacture or procure any defense article for any country whose defense the President deems vital to ours; *to dispose* of such articles to such governments (with limitations previously referred to); to repair the defense articles of nations whom we aid under the bill; and to communicate defense information to or for the benefit of those nations."

* * * * * * * * * * *

"The powers authorized under section 3(a) may be exercised 'notwithstanding the provisions of any other law'. The reason for the inclusion of that phrase in the bill is to insure that statutes inconsistent with or partially dealing with the subject matter covered by the provisions of section 3(a) of the bill be not construed so as to prohibit the effective carrying out of the terms of that section. The operation of such statutes, in the field covered by section 3(a) is only temporarily suspended; such laws are not, however, repealed, or in any way affected; in so far as they do not conflict with or overlap section 3(a)."

* * * * * * * * * * *

"Section 3(a)(1) of the bill, in providing for the manufacture or procurement by the United States Government of the defense articles for those nations whose defense is deemed vital to ours, contains no violation of international law."

* * * * * * * * * * *

"Section 3(b) provides that the terms and conditions upon which aid may be furnished to other nations 'shall be those which the President deems satisfactory, and the benefit to the United States *may be payment or repayment in kind or property, or any other direct or indirect benefit which the President deems satisfactory*'.

"Secretary of the Treasury Morgenthau has testified that Great Britain has *only sufficient assets convertible into dollars both here and abroad to pay for orders already placed. The bill accordingly permits payments to be made by other means.* Britain might thus be required to repay the United States for the aid we should give under the bill in raw materials, such as tin and rubber. Or the President could require any of a thousand other direct or indirect benefits to the United States for the transfer of defense articles to a nation whose defense is vital to ours."

VI.

The reports of the President, the Lend-Lease Administrator, and Foreign Economic Administration to Congress, clearly demonstrate that the funds appropriated by Congress for expenditure under Lend-Lease were to be expended for the purchase and transfer of property for the use and benefit of foreign governments, for military, naval and civil use and such was laid down as the policy of the United States in these reports to Congress and such policy was approved by Congress in making other appropriations thereafter, and such shipments are not entitled to land-grant rates.

To show that it was the plain intent of Congress that the Lend-Lease Act *comprise, and the appropriations made therefor be used for,* anything which would benefit these foreign nations, it is only necessary to read in the Congressional Record, Volume 87, page 2097, the remarks of Senator Barkley and Senator Clark, of Missouri, and explanation of Representative Bloom, in reporting the Senate amendment to the House. Senator Barkley said:

"'In order that there may be no doubt that the word 'commodity' includes agricultural commodities, I send forward an amendment to ask that it be agreed to.'"

Senator Clark challenged any Senator to rise on the floor and tell him anything which was not included in the defini-

tion of "defense article", as set forth in Section 2 of the Bill, and no Senator arose.

In fact, the Act is all inclusive and covers everything from birth to death.

From these few expressions, it is plain that Congress intended the Lend-Lease Bill to comprise, and the appropriations made therefor, to be used for anything which the President thought would be to the benefit of these foreign nations.

These reports of the President, the Lend-Lease Administrator and the Foreign Economic Administration show that articles allocated, obligations contracted, and expenditures made, under the Lend-Lease Act and supplements thereto, include a vast variety of goods such as, agricultural and industrial commodities and other articles, food stuffs, dairy products, seed, grain and cereal products, and food stuffs not classified, cotton, tobacco, machinery equipment, materials and supplies, minerals, chemicals, nitrates and phosphates, civilian medical supplies, investment in facilities not owned by the agency, investments in facilities owned by the Defense Plant Corporation, engineering equipment, medical equipment and agricultural implements.

Reports were made quarterly to Congress by the President, the Lend-Lease Administrator, and Foreign Economic Administration, of shipments under Lend-Lease and reverse lend-lease.

The first report of the President to Congress is dated June 10, 1941, Senate Document No. 66, 77th Congress, 1st Session, in which he shows that the purpose of the purchase of defense articles under the Lend-Lease Act was for the sale, transfer or disposition to other Governments.

The reports show that much of the goods shipped under Lend-Lease were for civilian use.

In his first report (Page V), the President said:

> "Millions of pounds of food are being and will be sent. Iron and steel, machine tools, and the other essentials to maintain and increase the production of

war materials in Britain are being sent and received in larger quantities day by day."

In his second report, September 11, 1941, the President outlines the British food program, and shows that hundreds of thousands of tons of food were shipped.

Special attention is called to the President's third report, which is dated December 12, 1941, and gives a report on Lend-Lease operations to November 30, 1941. On page 8 is shown the appropriations and the use to which they were put. On page 10 is shown the allocations and obligations under the Lend-Lease Act of millions of dollars, first by procurement agencies and second by appropriation categories. On page 11 is shown:

"QUANTITIES OF NONMILITARY GOODS TRANSFERRED

To November 30, 1941

Commodity	*Quantity*
Meat and Fish Products	535,742,451 pounds
Milk Products	343,301,116 pounds
Egg Products	87,438,813 pounds
Fruits and Vegetables	548,091,424 pounds
Grain and Cereal Products	719,834,984 pounds
Sugar and Related Products	6,058,740 pounds
Raw Cotton	439,619 pounds
Leaf Tobacco	120,833 hogsheads
Fertilizer	477,162 tons

On page 11, under the heading, "Total Lend-Lease Aid", the President said:

"Lend-Lease aid cannot be adequately reflected by figures alone. * * * It includes the goods which have been completed and the facilities that are being expanded to produce more goods. It includes the raw materials and machine tools that have made it possible for the Lend-Lease countries to step up their production of war material. It includes the hundreds of things that are being done which are described in subsequent chapters."

At Chapter 5 on page 24 of this report, under the title, "The Food Front", the President used these words:

> "*Within recent weeks, Lend-Lease foods marked 'Produce of the U. S. A.' are beginning to appear in sizable quantities on grocers' shelves and in the kitchen of Great Britain.* Since the last report to Congress, *Lend-Lease food* has moved steadily and in increasing quantities over the bridge of ships, bringing new strength to the bodies and new hope to the minds and spirits of the *British people.*"

He further says in the same chapter:

> "Since the beginning of Lend-Lease, we have shipped to the British *food* and *farm* produce totalling 2,796,000,000 pounds with a value of $292,000,000. Of this total, 1,892,000,000 pounds with a value of $181,000,000 have been supplied in the last three months. The steady increase of our aid is shown by the fact that the tonnage provided in the last three months is twice as great as that provided in the preceding six months."
>
> "The British are expanding their production of *bulky goods*, such as *wheat and potatoes*; and have greatly increased *their truck gardening*. Since 1939 acres under cultivation have increased from 12,000,000 to 16,000,000 and some further expansion is expected. To aid this source of production, tractors and other *farm equipment* have been supplied by Lend-Lease and deliveries of *seed* are planned."

He refers in this report to *vitamin* shipments which are largely responsible for a *new project of free distribution of vitamins to children under 2 years of age.*

In the fourth report the President speaks of Lend-Lease machinery and other equipment *fortifying the heavy industries and agriculture* of our allies.

In the President's seventh report, on pages 24 and 25, he speaks of the *policy of the United States to provide food, medicines and other necessities to alleviate the hunger and suffering* of the people in any territory occupied by our forces, as far as it is humanly within our power to do so.

In this report he speaks of steps already taken with respect to North Africa in execution of this policy and that $5,000,000 worth of *civilian* goods were purchased for shipment to that area. He says:

> "The United Nations will help the victims of war in liberated territories, not only out of common humanity, but for the most urgent political and military reasons. Expansion of the *agricultural* production of the reoccupied regions and the improvement of their transportation facilities will be of great value to our military forces. Increased food production on the spot will enable us, after meeting the requirements of the *civilian* population, to supply our forces with some foodstuffs, thus saving valuable shipping space."

In the tenth report, showing the policy of the President and Congress, it is said:

> "In the invasion to come, Lend-Lease supplies will have a two-fold task: to furnish aid to the invading forces of the United Nations, *and to aid the peoples of the liberated areas.* Lend-Lease will continue to furnish greater and greater amounts of war supplies to the United Nations armies. *Lend-Lease supplies will also be needed to assist the people of newly liberated areas to help themselves and the United Nations through restoring the production of their farms, factories and mines.*"

The eleventh report, dated August 25, 1943, says:

> "Lend-Lease agricultural machinery and seeds have *been shipped to facilitate planting, cultivating and harvesting.*"

Page 26 of this report shows that exports of food to North Africa have been decreasing, but *large amounts of seed for planting have been sent in order to expand food production and diminish the necessity for further food shipments.*

On page 28 it shows that more than *400,000 pounds of Lend-Lease seed* have been shipped.

The fourteenth report again refers to foods, and says:

> "In addition to food, we have sent about 9000 tons of *seeds for the production in Russia of more food in devastated areas now reconquered and in newly developed farmlands far in the interior.*" (p. 33)

On page 30, after specifying shipments sent to the Pacific and Far East, the report says:

> "Almost all the remaining shipments have consisted of *industrial materials and products for the production of fighting equipment, food, and strategic raw materials in Australia, New Zealand and India.*"

The seventeenth report refers to quantities of *industrial goods, foodstuffs, industrial materials and equipment, and other non-military lend-lease goods supplied by the Foreign Economic Administration.*

Special attention is called to the following language in the letter of transmittal submitting the eleventh report, on pages 5 and 6, as follows:

> "Except for the responsible fascist leaders, the people of the Axis need not fear unconditional surrender to the United Nations. I have said that we shall bring food for the starving and medicine for the sick in the areas liberated by the United Nations. We have done so, under lend-lease, in North Africa. We are doing so in Sicily. We shall continue to do so in other areas, as they are liberated, to prevent economic breakdown and to aid the liberated peoples to produce and to help themselves. We shall provide these necessary *civilian* supplies in support of our military operations and as a matter of simple humanity."

Thus, it will be seen that a large proportion of the goods transferred to foreign countries were bought and shipped under Lend-Lease, under the policy established by the President, and approved by Congress, for *civil* use. Congress has appropriated the following:

I. LEND-LEASE APPROPRIATIONS TO THE PRESIDENT.

First Lend-Lease Appropriation, March 27, 1941	$7,000,000,000
Second Lend-Lease Appropriation, October 28, 1941	$5,985,000,000
Third Lend-Lease Appropriation, March 5, 1942	$5,425,000,000
Fourth Lend-Lease Appropriation, June 14, 1943	$6,273,629,000
Fifth Lend-Lease Appropriation, June 30, 1944	$3,538,869,000
Total	$28,222,498,000

II. LEND-LEASE TRANSFERS AUTHORIZED FROM OTHER APPROPRIATIONS.

War Department:	
Third Supplemental, 1942	$2,000,000,000
Fourth Supplemental, 1942	4,000,000,000
Fifth Supplemental, 1942	11,250,000,000
Sixth Supplemental, 1942	2,220,000,000
Military Appropriation Act—1943	12,700,000,000
Navy Department:	
Second Supplemental, 1943	$3,000,000,000
Departments Other Than War:	
Third Supplemental, 1942	$800,000,000
Total	$35,970,000,000

(See Seventeenth Report, Appendix VII, page 60.)

From the above, it must be concluded that the intention of Congress was that shipments of defense articles as described in the Lend-Lease Act have no connection with, and do not come within, the exception of Section 3(a).

VII.

An administrative construction of a statute, which is immediately challenged, cannot be broadened into a settled administrative practice.

A Departmental construction of the Act does not, and cannot, have the force and effect of law. It appears from the decisions of the Comptroller General that several of the Government departments have construed the phrase "military or naval property of the United States moving for military or naval and not for civil use" to apply to all articles purchased under the Lend-Lease Act *regardless of the nature of the article*, or the use to which it is to be put; and throughout the rulings of the Comptroller General runs the idea that all that is necessary is that a notice be placed on the Bill of Lading, or for some officer or Department Agency to state that it was "moving for military or naval and not for civil use".

Although the Comptroller General takes the position that any goods purchased under the Lend-Lease Act, no matter what the character thereof may be, take land-grant rates, nevertheless, such Departmental ruling cannot be given the force and effect of law.

Iselin, Appt. v. *United States*, 270 U. S. 245, 251.

In referring to Administrative practices and Departmental rulings, the Court says:

> "The Government calls attention to the fact that, as early as October 24, 1919, the Commissioner of Internal Revenue made the ruling pursuant to which the tax here in question was assessed; that on March 22, 1920, the Attorney General sustained that ruling; that the provisions here in question were re-enacted without substantial change in the Revenue Act of 1921, Act of November 23, 1921, Section 800(a), chap. 136, 42 Stat. at L. 227, Comp. Stat. Sec. 6309-5/8A, Fed Stat. Anno. Supp. 1921, p. 190, and the Revenue Act of 1924, Act of June 2, 1924, Sec. 500(a), chap. 234, 43 Stat. at L. 253, Fed. Stat. Anno. Supp. 1924, p. 149; and that the administrative practice adopted in 1919 has been steadfastly pursued.

> It suggests that these facts imply legislative recognition and approval of the executive construction of the statute. But the construction was neither uniform, general, nor long continued; neither is the statute ambiguous. Such departmental construction cannot be given the force and effect of law."

The latest case on the subject is *Walling, Admr. of Wage & Hour Division, &c.* v. *Baltimore Steam Packet Co.*, Circuit Court of Appeals, Fourth Circuit, decided June 6, 1944, 144 Fed. (2d) 130. The opinion in the case is written by Circuit Judge Parker, and on *page 134 the Court* says:

> "The Collector relies upon what he says is the administrative construction placed upon the act; but administrative construction can be used as a guide to interpretation only when there is ambiguity in the language of the statute and the administrative construction is consistent and not plainly erroneous. There is no ambiguity in the statute here, and we fail to find evidence of any such settled and consistent administrative construction as would justify an interpretation at variance with what we think is clear meaning, if such interpretation were ever permissible. It is well settled that, in case of ambiguity, great weight is given to an administrative interpretation of a statute long and consistently followed; but it is equally well settled that where the provisions of an act are plain and unambiguous, the department administering it has no power to extend or amend it by regulations or interpretation (citing cases) . . . We are impressed here with the absence of any such consistent administrative interpretation as we would be justified in following, even if there were ambiguity.

See also:

Allen v. *Ocean S. S. Co. of Savannah*, 123 Fed. (2d) 469.

U. S. v. *Jackson*, 280 U. S. 183.

National Lead Co. v. *U. S.*, 252 U. S. 140.

It appears from a letter of the Lend-Lease Administrator, dated September 21, 1943, to the Deputy Food Admin-

istrator, War Food Administration, a copy of which was sent to the Comptroller General, that there was at that time no consistent administrative interpretation of the Lend-Lease Act by the various departments of the Government which the Comptroller General would be justified in following. In the letter, the Lend-Lease Administrator, in referring to the applicability of land-grant deductions to Lend-Lease shipments, (Exhibit No. 15 attached to the Stipulation of Facts), says:

> "The question is one with which the various agencies procuring and shipping lend-lease commodities and materials have had to deal. *We are informed that there has been a difference of opinion in some cases among representatives of such agencies.*"

This letter was written just twenty days prior to the letter of October 12, 1943, from the Comptroller General to the Auditor of Revenues of the Seaboard Air Line Railway, Ruling B-29861, and ninety days prior to the ruling by the Comptroller General in the instant case. So it definitely appears there was no consistent administrative ruling by the Government Departments even though the statute may be said to be ambiguous, and which the legislative history and the language of the Transportation Act itself show it is not. It also appears from what we have shown from the reports of the President, the Lend-Lease Administrator, and the Foreign Economic Administration, that the President had already laid down a policy which had been and was to be carried out in the future, to-wit: that the appropriations for Lend-Lease shipments were expended for the purchase of articles by and for *foreign governments* for *civil* as well as military *use*, and *not for the Government of the United States*, for military or naval use. The policy laid down, and interpretation of the Act, by the President, approved by Congress in granting additional appropriations, is in direct contradiction to the rulings of the Comptroller General.

In his letter to the Deputy Food Administrator the Lend-Lease Administrator further says:

> "The use made by the United States of all lend-lease materials is to promote the defense of the United States, which is clearly a military and not a civil use. It is this use which is determinative and controlling, rather than the use to which the goods may ultimately be put by the government to which they are transferred. There is, therefore, no need to inquire into such ultimate use. It is sufficient that the property is being shipped by the United States Government in the interests of its national defense and its military policy."

It appears from the various reports that goods are purchased and stored by the various departments of the Government and the ultimate use for which they are purchased is not known at the time of purchase, and probably not known at the time of transfer to the British Government.

Attention is called to the case of *Davies Warehouse Co.* v. *Bowles*, 321 U. S., 144. The opinion in this case was written by Mr. Justice Jackson.

In the Supreme Court, Price Administrator Bowles contended that the Supreme Court should accept the Administrator's views. The Supreme Court refused to do this. The Administrator's construction having been immediately challenged by the Warehouse Company, Mr. Justice Jackson said:

> "Lastly, it is contended that we should accept the Administrator's view in deference to administrative construction. The administrative ruling in this case was no sooner made than challenged. We cannot be certain how far it was determined by the considerations advanced, mistakenly as we think, in its defense in this case. It has already seasoned or broadened into a settled administrative practice. If Congress had deemed it necessary or even appropriate that the Administrator's order should in effect be final in construing the scope of the national price-fixing policy, it would not have been at a loss for words to say so. We do not

think it should over-weigh the considerations we have set forth as to the proper construction of the statute."

VIII.

In construing Section 321 of the Transportation Act of 1940 effect must be given to every clause, word or part of the act.

Our former Land Grant Acts have been quite general in language and scope. Heretofore, in designating the property to be subject to land grant rates, Congress has used such terms as "any property of the United States", "property of the United States"; etc., without further limitation. Under these statutes land grant rates have been given a wide application, and this has led to a more or less general impression that all Government property is entitled to land grant. The language of the new Act differs from the former Acts in that it describes specifically the Government property which *is to receive land grant*. We cannot ignore the fact, nor the effect, of the new language embodied in the present Act.

The exception in the new Act reads:

> "Military or naval property of the United States moving for military or naval and not for civil use."

The use of the term "military or naval property" is clearly restrictive. It indicates that it is not *all property* of the Government moving for military or naval use which is to be excepted, but only *military* or *naval* property. If Congress had intended that *all Government property* moving for military or naval use was to be excepted there would be no need for the adjectives "military" or "naval". They were manifestly not used to indicate ownership by the Government, for the clause "of the United States", takes care of that point. Nor were they used to indicate the use which is to be made of the property, for the language "moving for military or naval and not for civil use" takes care of that point. These words, therefore, must be regarded as de-

scriptive adjectives used to *modify* and *restrict* the property entitled to land grant rate, to *property which in and* of itself, possesses distinctly *military* or *naval* characteristics when *transported*, which is property of the United States and which is to be used for *military* or *naval* and *not* for civil use.

Any other construction of the Act would render meaningless the term "military or naval property", and would reduce to a status of mere surplusage the words "military" or "naval".

In *United States* v. *Standard Brewery*, 251 U. S. 210, 64 L. ed. 229, the Supreme Court said:

> "It is elementary that all of the words used in a legislative act are to be given force and meaning."

In *P. & N. R. Co.* v. *I. C. C.*, 286 U. S. 299, 76 L. ed. 1115, the Supreme Court said:

> "The Transportation Act was remedial legislation and should, therefore, be given a liberal interpretation; *but for the same reason, exemptions from its sweep should be narrowed and limited to effect the remedy intended.*"

So, the term "military or naval property" must be construed strictly. The Act provides that the full applicable commercial rates shall be paid for the transportation of *property* of the United States or on its behalf. The provision with respect to *military* or *naval* property is an exception to this general provision. Where an exception or proviso follows a general enacting clause, such as is the case here, such exception or proviso is to be strictly construed.

Platt v. *Union Pacific R. R. Co.*, 99 U. S. 48, construing the statute granting lands to the Union Pacific in aid of construction, is especially apt in requiring that full force and effect be given to the adjectives "military" or "naval", descriptive of the *property excepted*, and the words "military or naval and not for civil", descriptive of the *use*.

There is no question but that military impedimenta, arms and ammunition, instruments or implements of warfare, and the like, owned by the United States would be included.

Phosphate rock is essentially civilian material. Certainly if there is any Government property moving for military or naval purposes on which the land-grant rates are *not* to apply—and the statute clearly implies that there is—then it would be these materials, none of which possess any military characteristics in themselves or when transported.

We must not be misled by the fact that the property may be owned by the Government, or may be moving for purposes of the Government. If the property does not come within the description, these facts are immaterial. In *United States* v. *Union P. R. Co.*, 249 U. S. 354, the Supreme Court construing the term "troops" in a land grant act, held that neither a furloughed soldier nor an applicant for enlistment who had been accepted, came within the description, and said:

> "the fact that the transportation is for the purposes of the Government in connection with its military enlistment is immaterial."

The property must not only be the property of the United States but must be *transported* for *use* of the *United States*. The concluding words of the exception "military and naval property of the United States moving for military and naval and not civil use" are as follows:

> "Or to the transportation of members of the military or naval forces of the United States . . . when such members are traveling on *official duty*."

So that "members of the military and naval forces of the United States" do not come within the exception unless they are traveling on *official duty*, and obviously, official duty means performance of their duty as members of the military or naval forces of the United States.

So, if the property is not being transported for *use* of the *United States*, but is *transported* to be delivered to a *for-*

eign government for *its use*, the shipment does not come within the exception of Section 321 (a).

Most of the acts of Congress which granted land in aid of railroads provide that they shall be "free from toll or other charge upon the transportation of any property or troops of the United States." This clause was construed in *Lake Superior & Mississippi R. R. Co.* v. *United States*, 93 U. S. 442, as conferring only the free use of the railroad roadbed as a highway. Following that decision, under appropriate legislation, payment has come to be made by the Government for the transportation of property and troops at rates equal to 50 per cent. of rates named in duly published tariffs and charged to the public generally. *United States* v. *Union Pacific R. R. Co.*, 249 U. S. 354; *Louisville & Nashville R. R. Co.* v. *United States* 258 U. S. 374.

In Transportation Act of 1940 (54 Stat. 954), under the caption, "Rates on Government Traffic—Government to Pay Full Rates," the Congress, by section 321 thereof, modified the requirements theretofore effective in respect of so-called land grant traffic and required, with certain exceptions, that the United States should pay full applicable commercial rates, fares, or charges for transportation by any common carrier subject to the act of any persons or property of the United States, or on its behalf. The section provided an exception that the provision just mentioned "shall not apply to the transportation of military or naval property of the United States moving for military or naval and not for civil use or to the transportation of members of the military or naval forces of the United States (or of property of such members) when such members are traveling on official duty." Section 321 (b) further provides in substance that if a carrier by railroad furnishing the transportation, or any predecessor in interest, shall have received grants of land from the United States, the provisions of law with respect to compensation for such transportation shall continue to apply as though Section 321 (a) had not been enacted until the carrier shall file with the Secretary of the

Interior a release of any claim against the United States to lands, interest in lands, etc. And a period of one year from the date of the Act (September 18, 1940) was allowed for filing of the release. It is understood that all the land grant lines have filed appropriate releases and are in a position to collect "commercial rates" to the extent authorized by Section 321 of that Act.

It is apparent from the foregoing resume of the provisions of Section 321 that there are two circumstances which are outstanding and controlling, (1) that by congressional legislation full commercial rates normally apply to transportation of government traffic, and that for lower rates to be applied the traffic must be shown to come within the exceptions specified in the section, and (2) that the Government has entered into a new and modified contract and agreement with the land grant lines which complied with and qualified under section 321 (b).

It is well settled that the contract between the United States and a railroad growing out of land grant legislation is binding on the United States, and the Government cannot, without consent of the railroad change it sterms by any subsequent legislation. *United States* v. *Central Pacific R. R. Co.*, 118 U. S. 235; *Perry* v. *United States*, 294 U. S. 330, 352.

It is clear, therefore, that the United States cannot legally increase or enlarge the burdens of the railroads in respect of land grant traffic over and above what existed as the result of early congressional legislation as modified by Section 321 of the Transportation Act of 1940. It is, of course, a corollary of this principle that the act of March 11, 1941 (55 Stat. 31, U. S. Code, Anno., Title 22, Sec. 411, 422), referred to therein as "An Act to Promote the Defense of the United States," and commonly known as the Lend-Lease Act, must be construed and applied accordingly.

IX.

Meaning of the phrase "Military or Naval Property of the United States Moving for Military or Naval and not for Civil Use."

We have found no definition of either "military property" or "naval property." Bouvier's Law Dictionary and 40 C. J. 658 define "military" as follows:

> "Anything pertaining to war or to the army; pertaining to war or to the army; concerned with war."

The definition of "naval" in Webster's New International Dictionary is:

> "Of or pertaining to ships or shipping; of, pertaining to, connected with, possessing, or characteristic of, vessels of war or a navy; as naval forces; naval victories; of first class naval power; naval stores."

The purpose of the exception in the Act being to limit the transportation of Government property, and there being no discussion in the Congress nor in the report of the Conference Committee where this exception to the bill was written, we will have to look elsewhere for the construction of this phrase. The Attorneys General of the United States have, from time to time, rendered opinions and construed the words "contraband of war" and "munitions of war" and Congress must have had this in mind in the passage of the Act, for Congress is presumed to have known and been familiar with the opinions of the Attorneys General when the Act was passed, and we will, therefore, refer to the various statutes and proclamations prohibiting the exportation of arms and ammunition leading up to the Neutrality Act of 1939.

On March 14, 1912, by Joint Resolution of Congress and proclamation issued thereunder by the President, it was made unlawful to export, except under such regulations and exceptions as the President shall prescribe,

"—any arms or munitions of war from any place in the United States to any American country in which conditions of domestic voilence are found by the President to exist."

The question was presented to Attorney General George W. Wickersham of what the term "arms and munitions of war" consisted. The Attorney General rendered an opinion on March 25, 1912 (29 O.A.G. 375) in which he listed articles which were treated by the International Conference held at London in 1908-9 as "absolute contraband" and said this list includes substantially all articles which may be considered as absolutely within the defintion of "arms and munitions of war." He further stated that—

"* * * Food and clothing may become contraband of war when destined to a port of naval equipment or an enemy, or for the supply of his army * * *, but they are classed as *conditionally contraband*, and not as absolutely contraband and do not fall within the usual definition of arms and munitions of war."

He then gave it as his opinion that without embracing all the articles referred to in the London Conference, the following should be considered within the term:

"Articles primarily and ordinarily used for military purposes in time of war, such as weapons of every species used for the destruction of life, and projectiles, cartridges, ammunition of all sorts, and other supplies used or useful in connection therewith, including parts used for the repair or manufacture of such arms, and raw material employed in the manufacture of such ammunition; also dynamite, nitroglycerin or other explosive substances; also gun mountings, limber boxes, limbers, military wagons, field forges, and their component parts, comprising equipment of a distinctly military character; articles of camp equipment and their distinctive component parts; and implements manufactured exclusively for the manufacture of implements of war or for the manufacture or repair of arms or war material."

He concluded, however, that "foodstuffs, ordinary clothing and ordinary articles of peaceful commerce are not included in the prohibition."

The question arose again in 1913 when the matter was presented to Attorney General J. C. McReynolds for an opinion whether articles of clothing "destined as the evidence indicates, for the use of insurgents" in Mexico were "munitions of war." The Attorney General in an opinion rendered August 11, 1913 (30 O.A.G. 213) ruled that "neither provisions nor ordinary, as distinguished from military, clothing falls within the category of 'munitions of war!'."

Later, the question was presented to Attorney General McReynolds whether "riding saddles, stirrups, girths, hay and other foodstuffs, and horses" intended for the Mexican army or for other parties are "munitions of war" within the meaning of the Joint Resolution and proclamation. The Attorney General, in an opinion dated October 6, 1913 (30 O. A. G. 227) refused to follow the opinion of Attorney General Wickersham as to the meaning of the term "arms and munitions of war" which was qualified in the statute by the phrase "in which conditions of domestic violence are found by the President to exist." In his opinion, Attorney General McReynolds stated:

> "I am satisfied the term 'munitions of war' should not be extended beyond the plain definition expressed in my opinion of August 11th. Outside of that limit you approach a debatable field where the articles are not clearly defined to 'promote domestic violence' where there is possibility of confusion in the minds of administrative officers; and, perhaps, the adoption of inquisitional methods, and where no line can logically be drawn short of practical non-intercourse with Mexico, a thing which I am sure Congress did not intend. And for these reasons, the particular designation of the articles, while important in determining their character as contraband, does not prove a safe guide to the character as 'munitions of war,' a character

which, in my judgment, must be fastened upon them by the inherent nature of the articles themselves."

"These conclusions caused me to dissent from the opinion of Attorney General Wickersham of April 20, 1912. . . This conclusion was probably largely based on the Declaration of London of 1909 (see 29 Op. 377-8) defining absolute contraband, and, as indicated above, I do not think such a declaration a correct guide to the meaning of the term 'munitions of war' in the Joint Resolution of Congress."

In addition to the Joint Resolution of Congress of March 14, 1912, above interpreted, there was an act passed on June 15, 1917, which provided that "whenever during the present war the President shall find that public safety so requires and shall make proclamation thereof, it shall be unlawful to export from or take out of the United States to any country named in such proclamation any *article or articles mentioned in such proclamation*, except under regulations."

Thereafter, the President issued a proclamation prohibiting the exportation of certain named articles to certain countries, including Mexico. The question arose as to whether this embargo on arms and ammunition to Mexico *extended to machinery to be used for the manufacture of arms and ammunition*. In an opinion rendered March 2, 1920 (32 O.A.G. 132) Attorney General A. Mitchell Palmer ruled, under the facts, that it did not, stating:

"It is to be noted that no state of war exists between Mexico and the United States, so that any articles exported from the United States and into Mexico constitute an illegal commerce as contraband of war, but such exportation and importation are only illegal by force of statutes and proclamations mentioned and to the extent therein stated. The nature of these provisions is such that they should be properly restricted to such articles as the ordinary significance of the terms used would cover. I do not think that machinery to be used in the construction of a plant for the production of arms and munitions of war in Mexico would constitute an exportation of such arms and munitions within fair

> construction of the language. Further, the carrying in of the machinery and the construction of a plant would hardly afford the same opportunities for promotion of disorder and conditions of domestic violence as would flow from the exportation of arms and munitions."

It will be noted that neither Attorneys General McReynolds nor Palmer took the same view of the character of arms and munitions of war as did Attorney General George W. Wickersham. Attorney General Wickersham based his opinion, 29 O.A.G. 375, March 25, 1912, apparently upon a list of articles prepared at the International Conference in London during the winter 1908-9, but even the reading of these articles, as shown above, excluded any such articles as the Comptroller General included in the use of land-grant rates.

In his opinion, August 11, 1913, Attorney General McReynolds said:

> "In my judgment, however, neither provisions nor ordinary, as distinguished from military, clothing falls within the category of 'munitions of war'."

and in his opinion of October 6, 1913, he says:

> "I am satisfied the term 'munitions of war' should not be extended beyond the plain definition expressed in my opinion of August 11. Outside of that limit you approach a debatable field where the articles are not clearly defined to 'promote domestic violence' where there is a possibility of confusion in the minds of administrative officers, etc."

Attorney General Palmer, in his opinion of March 2, 1920, regarding the exportation of arms and munitions to Mexico, held:

> "I do not think that machinery to be used in the construction of a plant for the production of arms and munitions of war in Mexico would constitute an exportation of such arms and munitions within fair con-

struction of the language. Further, the carrying in of the machinery and the construction of a plant would hardly afford the same opportunities for promotion of disorder and conditions of domestic violence as would flow from the exportation of arms and munitions."

The Attorneys General were dealing with military property in writing these opinions because the matters that they were passing upon were all related to the word "military."

When the present world war was threatened, the Congress on August 31, 1935, passed Senate Joint Resolution 173 (49 Stats. 1081), which provided:

> "Upon the outbreak or during the progress of war between, or among, two or more foreign states, the President shall proclaim such fact, and it shall thereafter be unlawful to export arms, ammunition, or implements of war from any place in the United States, or possessions of the United States, to any port of such belligerent states, or to any neutral ports of transshipment to, or for the use of, a belligerent country.
>
> "The President, by proclamation, shall definitely enumerate the arms, ammunition, or implements of war, the export of which is prohibited by this Act."

By proclamation No. 2163, dated April 10, 1936 (49 Stats. 3303) the President enumerated the articles which should be considered "arms, ammunition and implements of war" within the meaning of the Act, all of which items clearly come within that category.

On May 1, 1937, Congress passed Senate Joint Resolution 51 (50 Stats. 121), to amend the Act of August 31, 1935, which provided that "the arms, ammunition and implements of war so enumerated shall include those enumerated in the President's proclamation No. 2163, of April 10, 1936, *but shall not include raw materials or any other articles or materials not of the same general character as those enumerated in the said proclamation*, and in the Convention for the Supervision of the International Trade in Arms and

Ammunition, and in Implements of War, signed at Geneva June 17, 1925."

On May 1, 1937, the President issued his proclamation No. 2237 (50 Stats. 1834) listing additional articles, most of which are definitely articles of war or chemicals used in connection therewith, *there being no agricultural or other articles for civilian use listed.*

On September 5, 1939, the President issued his proclamation No. 2348 (54 Stats. 2629) proclaiming the neutrality of the United States in the war between Germany and the United Kingdom, et al., and on the same day he issued proclamation No. 2349 (54 Stats. 2634) under the Joint Resolution of May 1, 1937, listing further articles, the exportation of which was prohibited, most of which are definitely articles of war or chemicals used in connection therewith, *there being no agricultural or other articles for civilian use listed.*

On November 4, 1939, (54 Stats. 4), Congress passed House Joint Resolution 306, which repealed Joint Resolution of August 31, 1935, as amended, but did not expressly repeal the Joint Resolution of May 1, 1937.

Section 1(a) of this Joint Resolution provides that:

> "* * * whenever the President, or the Congress by concurrent resolution, shall find that there exists a state of war between foreign states, and that it is necessary to promote the security or preserve the peace of the United States or to protect the lives of citizens of the United States, the President shall issue, a proclamation naming the states involved; and he shall, from time to time, by proclamations, name other states as and when they may become involved in the war."

Section 2(c) provides, in part:

> "Whenever the President shall have issued a proclamation under the authority of section 1(a) it shall thereafter *be unlawful to export or transport,* or attempt to export or transport, or cause to be exported or transported, from the United States, to any state named in such proclamation, *any articles or materials*

(except copyrighted articles or materials) until all right, title, and interest therein shall have been transferred to some foreign government, agency, institution, association, partnership, corporation, or national. Issuance of a bill of lading under which title to the articles or materials to be exported or transported passes to a foreign purchaser unconditionally upon the delivery of such articles or materials to a carrier, shall constitute a transfer of all right, title, and interest therein within the meaning of this subsection. * * * "

Assuming that the Joint Resolution of May 1, 1937, was still in force and effect, this law would appear to prohibit the exportation of "articles or materials" not prohibited by the Proclamation, unless title thereto was vested in the purchase at port of embarkation. It will thus be seen that under the earlier neutrality laws the prohibition against exportation was directed to "arms and munitions of war", whereas under the recent neutrality laws they were restricted to "articles or materials" prohibited by the Proclamation of the President.

X.

Land-grant rates are not applicable to shipments of phosphate rock.

The condensed Chemical Dictionary, Third Edition, defines phosphate rock as follows:

> "A natural rock consisting largely of calcium phosphate used chiefly as a raw material for manufacture of phosphatic fertilizers, super-phosphate, triple (or treble) super-phosphate and dicalcium phosphate. A small amount is ground and applied directly to the soil. Among the minor uses are the manufacture of phosphorus and phosphoric acid and of ferrophosphorus for use in the steel industries. For adjusting the phosphorus content of pig iron, phosphate rock is included in the blast-furnace charge."

The phosphate rock here involved was neither
(1) military or naval property of the United States nor
(2) moving for military or naval and not for civil use.

In order to come within the exception contained in Section 321, the following essential things must be present:

The shipment must be
1. Military or naval property.
2. The property must be that of the United States.
3. It must be moved or transported.
4. For military or naval use.
5. It must not be transported for civil use.
6. The use must be for the United States.

Section 321(a) and Section 321(b) of the Transportation Act 1940 are amendments to the Acts of Congress granting lands to various railroads, in that they contain a partial release of the railroads' obligation to transport *Government* property at reduced rates upon the condition of releasing claims for additional lands, etc., which, upon filing the required releases, as has been done, constitutes a contract based upon adequate consideration. The debates in Congress, reports of committees and testimony of the witnesses before the committees show that it was the intention of Congress to *limit* the transportation of *Government* property at reduced rates to "military and naval property of the *United States* moving for military or naval and not for civil use." The language of these sections must be so construed that all the words shall have meaning and effect and that no word shall be superfluous or meaningless.

Property is not the *bare article* itself, *property* is more than the mere thing which a person owns. It includes the right to acquire, use and dispose of it, and the privilege of use is only one attribute among many of the bundle of privileges that make property ownership. *Buchanan* v. *Warley*, 245 U. S. 60; *Henneford* v. *Silas Mason Company*, 300 U. S. 577, 582. The words are "military and naval property of the United States *moving* for military or naval and not for civil

use.'" Property is *transported* for a variety of uses. Take the building of a camp for instance, or the building of a ship. Before the camp or cantonment can be built there must be shipped sand, cement, lime, hair, nails, lumber, brick, glass, wire, roofing, copper, pipes for gutters and drainage, doors, windows, window sash, and various other articles. These are purchased, stored, transported, processed and distributed before such articles are *used* in the building of the camp. These articles are *transported* for *construction* of the camp, which is a facility to be used by the Government *after completion of* the construction. However, the *property transported* for this *facility* is not property transported for *military use*. It is transported to be used by the contractor for the *construction* of the plant.

It appears from the President's directive that this property was *transferred to the British Government*. It was certainly not military or naval property of the United States, nor was it being moved or transported for military or naval use (of the United States).

The words in the Act were intended to apply *only* to military and naval property of the *United States*. If property is bought to be *transferred* to and *is transferred to some other Government*, certainly it was not the intention of Congress, as shown from the debates and reports, that land grant-rates should apply. Throughout the debates it was solely *property* of the *United States* upon which the debates turned. It was solely property of the United States, the *transportation* of which under land-grant rates was intended to be *restricted*, and it was likewise only such property that was moving for military and naval and not civil use. The camps and cantonments that we have just referred to were built by contractors under contract with the United States at cost plus. The articles going into the construction of these camps were articles moving to the contractors for *commercial* purposes only, which was *civil use*. The fact that the plant upon *completion* was to be *used* by the army, does not affect the other fact that the *property*

was the *contractor's property* for *use* in constructing the camp.

The Defense Act, known as the Lend-Lease Act, nowhere mentions the terms "military" or "naval."

This phosphate rock was not military or naval property of the *United States* moving for military or naval and not civil use. In the first place, it cannot, by any stretch of the imagination, be classed as military or naval property, which is excepted in the Transportation Act, whereas agricultural products are *defense* articles under the Lend-Lease Act. The use to which phosphate rock is put is for an agricultural purpose. In *McLeod* v. *Dilworth*, 322 U. S., 327, the Court distinguished between the words "use" and "sales" in the tax acts. The Court says: (pp. 330, 331)

> "A sales tax and a use tax in many instances may bring about the same results. But they are different in conception, *are assessments upon different transactions*, and in the interlacings of the two legislative authorities within our federation may have to justify themselves on different constitutional grounds. A *sales tax is a tax on the freedom of purchase—a freedom which wartime restrictions serve to emphasize. A use tax is a tax on the enjoyment of that which was purchased. In view of the differences between these transactions and the differences in the relation of the taxing state to them, a tax on an interstate sale like the one before us and unlike the tax on the enjoyment of the goods sold, involves an assumption of power by a State which the Commerce Clause was meant to end.*
>
> *. . . Though sales and use taxes may secure the same revenues and serve complementary purposes, they are, as we have indicated, taxes on different transactions and for different opportunities afforded by a State.*"

Land Grants were given in exchange for land granted by the United States, under statutes creating a contract for a valuable considration, and restricted to transportation of Government property. There was no intention that foreign governments were to be the beneficiaries.

Cross v. *United States, et al,* (CCA 7th) 133 Fed. (2d) 183 (1943).

In this case the Court said:

> "The situation thus disclosed brings us to the question as to whether a carrier shall be required to transport freight at land-grant rates *for the benefit of a party other than the Government.* * * * We are of the view, however, that there is no reason to construe such a provision so that the benefit will accrue to a third person."

XI.

Section 321(a) of the Transportation Act of 1940 must be read and construed in the light of the public policy entertained, and the purposes sought to be accomplished at the time it was enacted, rather than at a later period when different ideas and theories may prevail.

Prior to the enactment of Section 321 (a) of the Transportation Act, the United States was entitled to reduced rates on all of its shipments, *regardless* of the *character* of the *product* or its *use,* and, as shown by the hearings, the United States was the largest patron of the railroads. Congress recognized the fact that to apply 50 per cent of the rate fixed by the Interstate Commerce Commission as a reasonable rate would impose a great burden on the railroads, was an unjust discrimination against other shippers, and, for these reasons, Section 321 (a) was enacted. This statute, therefore, should be construed in the light of the public policy entertained by Congress *at the time of the passage of the Act,* and *not in the light of events thereafter arising out of the passage of the Lend-Lease Act.*

In *M. & O. Railroad* v. *Tennessee,* 153 U. S. 486, the Court stated the rule of construction of legislative contracts as follows:

> "Legislative contracts, especially, should be read in the light of the public policy entertained, and the pur-

poses sought to be accomplished *at the time they were made, rather, than at a later period when different ideas and theories may prevail.*"

Karnuth v. *United States*, 279 U. S. 231;
American Tobacco Co. v. *Werckmeister*, 207 U. S. 284.
Colgate-Palmolive-Peet Co. v. *United States*, 320 U. S. 422.
Maurer v. *Hamilton*, 309 U. S. 598, 608.
Sorrell v. *United States*, 287 U. S. 435, 446.

With these purposes in mind, it is well to examine the hearings, reports and debates in Congress to ascertain the purposes of Congress in enacting the exception, and it will be seen that the main purpose of Congress was to eliminate the abuse by the Government in applying land-grant rates to shipments of Government property; non-military in character, which the Government was applying to material going into construction for civil works throughout the country, especially after 1933.

From the history which we have heretofore set forth in full, it is apparent that the purpose of the Congress in enacting Section 321(a) was to limit, clearly and succinctly, the character of property belonging to the United States which was to be transported at land-grant rates, so as to exclude all property, except military and naval property of the United States moving for military or naval and not for civil use. That was the purpose of Congress *at the time the Act was passed*. There is nothing in the debates on the Lend-Lease Act to show that this declared purpose of Congress was to be defeated by a definition of "defense articles."

The theory of the Lend-Lease Act is in no way consonant with, and has no relation to, the purpose for which Section 321(a) was passed. The clearly defined purpose of the Lend-Lease Act was to give aid to foreign governments whose defense the President of the United States deems necessary to the defense of the United States, and the

simple definition of "defense article" in the Lend-Lease Act cannot be construed to affect the view of Congress in enacting Section 321(a). The definition in the Lend-Lease Act of "defense articles," in no sense of the word, can change the definition of the words "military or naval property of the United States, moving for military or naval and not for civil use."

The rule to be applied in interpreting Section 321 is that laid down by the Supreme Court of the United States in *United States* v. *Galveston, Harrisburg & San Antonio Railway*, 279 U. S. 401, *supra*.

XII.

The mere fact that property transferred to Great Britain is defined "defense articles" in the Lend-Lease Act, does not bring it within the exception of Section 321(a).

In the letter from the Lend-Lease Administrator to the Deputy Food Administrator, War Food Administration, dated September 21, 1943, a copy of which was sent to the Comptroller General, (Exhibit 15) upon which he based his decision and ruling in this case, as shown by his letter of December 23, 1943, mentioned herein, the Lend-Lease Administrator says:

> "The declared purpose of the Lend-Lease Act is 'further to promote the defense of the United States.' It empowers the President when he deems it to be in the interest of our *national defense* to authorize the head of any department or agency of the government to procure any defense article 'for the government of any country whose defense the President deems vital to the defense of the United States' and to dispose of such defense articles to any such government.
>
> The term 'defense article' as used in the Lend-Lease Act is defined in such manner as to include not only articles 'any agricultural, industrial, or other commodity or article for defense.' Correspondingly, the various acts appropriating funds to carry out the provisions of the Lend-Lease Act include, among others,

funds for the purchase of such 'agricultural, industrial, and other commodities and articles.'

The use made by the United States of all lend-lease materials is to promote the defense of the United States, which is clearly a military and not a civil use. It is this use which is determinative and controlling, rather than the use to which the goods may ultimately be put by the government to which they are transferred. There is therefore no need to inquire into such ultimate use. It is sufficient that the property is being shipped by the United States Government in the interests of its national defense and its military policy."

Under all of the rules of statutory construction which the courts have announced, in order to bring any kind of property transported within the above exception to the statute, the property must *not only* be (1) property of the United States, and also (2) moving for military or naval and *not* for civil use, but it must also be (3) *military or naval property*. If one of these three elements could be more essential to the applicability of the exception than the others (which is not true), the requirement that the property be "military or naval property" could well be held to be the prime essential requirement, because it *characterizes the nature* of the excepted property itself, while the other requirements *further limit the excepted property* by the *use* to which it is put.

The mere reading of the list of the kinds of property which the Government at least impliedly contends is 'military or naval property" negatives the Government's contention without argument or authority. Its contention applies to property such as seed, phosphate rock, superphosphate, machinery for any purpose, and other raw materials; and this, in the face of the fact that the President in his third report to Congress, December 12, 1941 (Page 11), lists all of this as "non-military goods", which it most obviously is. The Government's whole argument in this case is based on the gratuitous assumption, that the fact that the Lend-Lease Act denominates agricultural products and

the other kind of property above mentioned as "defense articles", and that all or some of these might be considered as remotely or indirectly useful in the ultimate defense of the United States, *ipso facto* makes such property "military or naval property." This, we submit, is not true, and practically assumes what the Government is required to show, namely, that such property, in addition to the other restrictive requirements of the exception, is "military or naval property."

We think by clear analogy the decision of the Supreme Court in *Southern Pacific Company* v. *United States*, 285 U. S. 240, 76 L. Ed. 736 (1932) is applicable here. That case held that engineer officers of the army presently in the service of the War Department, when assigned to duty in connection with the improvement of important rivers and harbors and the work of the California Debris Commission (involving improvement in navigation on certain California Tidal Rivers) were not "troops of the United States" within the provisions of the Railroad Land Grant Act then in force, which provided for reduced rates "for transportation of troops and munitions of war and military supplies and property." The court pointed out in referring to the case of *United States* v. *Union P. R. Co.*, 249 U. S. 354, that the fact that certain persons were members of the army would not of itself make them "troops" of the United States, such as a furloughed soldier for example. Likewise, the mere fact that some of this Lend-Lease material such as raw material, agricultural products, etc., would be indirectly and remotely useful in the general defense of the United States, would come far from making it "military or naval property" of the United States. In this case the Supreme Court said that, while the purpose for which these army officers were traveling, i.e. river and harbor improvements, "has in one aspect a bearing upon the *military defense* of the United States" "obviously" the court added, "the principal purpose of this work is the promotion of commerce and transportation, by maintaining

and deepening channels and constructing dikes, jetties, and other works which effect the improvement of navigation generally."

Furthermore, the Court says in the opinion, that "Congress has recognized that such service by engineer officers in non-military", citing certain provisions in the Army Appropriation Act; likewise, the President of the United States, who is charged with transferring the Lend-Lease materials to other nations has, as above mentioned, expressly listed these materials under the heading of "Non-military goods".

CONCLUSION.

We think we have demonstrated that the United States cannot maintain its counterclaim and, therefore, the judgment of the District Court should be affirmed.

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October 17, 1946.

APPENDIX.

Lend-Lease Act.

The Lend-Lease Act is as follows:

"Public Law 11—77 Congress—Chap. 11—1st Session
(H. R. 1776)

An Act Further to Promote the Defense of the United States, and for other purposes—(commonly known as the LEND-LEASE ACT).

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled*, That this Act may be cited as 'An Act to Promote the Defense of the United States'.

"Section 2. As used in this Act—

(a) The term 'defense article' means—

(1) Any weapon, munition, aircraft, vessel, or boat;

(2) Any machinery, facility, tool, material, or supply necessary for the manufacture, production, processing, repair, servicing, or operation of any article described in this sub-section;

(3) Any component material or part of or equipment for any article described in this sub-section;

(4) Any agricultural, industrial or other commodity or article of defense.

Such term 'defense article' includes any article described in this sub-section: Manufactured or procured pursuant to Section 3, or to which the United States or any foreign government has or hereafter acquires title, possession, or control.

(b) The term 'defense information' means any plan, specification, design, prototype, or information pertaining to any defense article.

"Section 3. (a) Notwithstanding the provisions of any other law, the President may, from time to time, when he deems it in the interest of national defense, authorize the Secretary of War, the Secretary of the Navy, or the head of any other department or agency of the Government—

(1) To manufacture in arsenals, factories, and shipyards under their jurisdiction, or otherwise procure, to the extent to which funds are made available therefor, or contracts are authorized from time to time by the Congress, or both, any defense article for the government of any country whose defense the President deems vital to the defense of the United States.

(2) To sell, transfer title to, exchange, lease, lend, or otherwise dispose of, to any such government any defense article, but no defense article not manufactured or procured under paragraph (1) shall in any way be disposed of under this paragraph, except after consultation with the Chief of Staff of the Army or the Chief of Naval Operations of the Navy, or both. The value of defense articles disposed of in any way under authority of this paragraph, and procured from funds heretofore appropriated, shall not exceed $1,300,000,000. The value of such defense articles shall be determined by the head of the department or agency concerned or such other department, agency or officer as shall be designated in the manner provided in the rules and regulations issued hereunder. Defense articles procured from funds hereafter appropriated to any department or agency of the Government, other than from funds authorized to be appropriated under this Act, shall not be disposed of in any way under authority of this paragraph except to the extent hereafter authorized by the Congress in the Acts appropriating such funds or otherwise.

(3) To test, inspect, prove, repair, outfit, recondition, or otherwise to place in good working order, to the extent to which funds are made available therefor, or contracts are authorized from time to time by the Congress, or both, any defense article for any such government, or to procure any or all such services by private contract.

(4) To communicate to any such government any defense information, pertaining to any defense article furnished to such government under paragraph (2) of this sub-section.

(5) To release for export any defense article disposed of in any way under this sub-section to any such government.

(b) The terms and conditions upon which any such foreign government receives any aid authorized under sub-section (a) shall be those which the President deems satisfactory, and the benefit to the United States may be payments or repayments in kind or property, or any other direct or indirect benefit which the President deems satisfactory.

(c) After June 30, 1943, or after the passage of a concurrent resolution by the two Houses before June 30, 1943, which declares that the powers conferred by or pursuant to sub-section (a) are no longer necessary to promote the defense of the United States, neither the President nor the head of any department or agency shall exercise any of the powers, conferred by or pursuant to sub-section (a); except that until July 1, 1946, any of such powers may be exercised to the extent necessary to carry out a contract or agreement with such a foreign government made before July 1, 1943, or before the passage of such concurrent resolution, whichever is the earlier.

(d) Nothing in this Act shall be construed to authorize or to permit the authorization of convoying vessels by naval vessels of the United States.

(e) Nothing in this Act shall be construed to authorize or to permit the authorization of the entry of any American vessel into a combat area in violation of section 3 of the Neutrality Act of 1939."

"Section 4. All contracts or agreements made for the disposition of any defense article or defense information pursuant to section 3 shall contain a clause by which the foreign government undertakes that it will not, without the consent of the President, transfer title to or possession of such defense article or defense information by gift, sale or otherwise, or permit its use by anyone not an officer, employee, or agent of such foreign government."

"Section 5. (a) The Secretary of War, the Secretary of the Navy, or the head of any other department or agency of the Government involved shall, when any such defense article or defense information is exported, immediately inform the department or agency designated by the President to administer section 6 of the

Act of July 2, 1940 (54 Stat. 714), of the quantities, character, value, terms of disposition, and destination of the article and information so exported.

(b) The President from time to time, but not less frequently than once every ninety days, shall transmit to the Congress a report of operations under this Act except such information as he deems incompatible with the public interest to disclose. Reports provided for under this sub-section shall be transmitted to the Secretary of the Senate or the Clerk of the House of Representatives, as the case may be, if the Senate or the House of Representatives, as the case may be, is not in session.

"Section 6. (a) There is hereby authorized to be appropriated from time to time, out of any money in the Treasury not otherwise appropriated, such amounts as may be necessary to carry out the provisions and accomplish the purposes of this Act.

(b) All money and all property which is converted into money received under section 3 from any government shall, with the approval of the Director of the Budget, revert to the respective appropriation or appropriations out of which funds were expended with respect to the defense article or defense information for which such consideration is received, and shall be available for expenditure for the purpose for which such expended funds were appropriated by law, during the fiscal year in which such funds are received and the ensuing fiscal year; but in no event shall any funds so received be available for expenditure after June 30, 1946."

"Section 7. The Secretary of War, the Secretary of the Navy, and the head of the department or agency shall in all contracts or agreements for the disposition of any defense article or defense information fully protect the rights of all citizens of the United States who have patent rights in and to any such article or information which is hereby authorized to be disposed of and the payments collected for royalties on such patents shall be paid to the owners and holders of such patents."

"Section 8. The Secretaries of War and of the Navy are hereby authorized to purchase or otherwise acquire arms, ammunition, and implements of war produced within the jurisdiction of any country to which section 3 is applicable, whenever the President deems such purchase or acquisition to be necessary in the interests of the defense of the United States."

"Section 9. The President may, from time to time, promulgate such rules and regulations as may be necessary and proper to carry out any of the provisions of this Act; and he may exercise any power or authority conferred on him by this Act through such department, agency, or officer as he shall direct."

"Section 10. Nothing in this Act shall be construed to change existing law relating to the use of the land and naval forces of the United States, except insofar as such use relates to the manufacture, procurement, and repair of defense articles, the communication of information and other noncombatant purposes enumerated in this Act."

"Section 11. If any provision of this Act or the application of such provision to any circumstance shall be held invalid, the validity of the remainder of the Act and the applicability of such provision to other circumstances shall not be affected thereby."

"Approved March 11, 1941."